



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/167582

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 21, 2015, at Ellsworth, Wisconsin.

The issue for determination is whether the petitioner is entitled to reimbursement for a walk-in bathtub.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Pierce County.
2. The petitioner requests a walk-in bathtub at a cost of \$18,650. Her husband, who is also disabled receives MA-Waiver benefits, would use the tub. Eleven thousand four twenty-six dollars of the cost would be attributed to him, leaving \$7,224 of the cost attributed to her.

3. The petitioner's bathing is done through sponge baths because she cannot safely get into and of a bathtub.
4. The petitioner has poor balance. She has trouble getting on and off the toilet and sometimes needs assistance doing so. The seating level of the requested walk-in tub would be similar to her toilet seat.
5. The cost of a walk-in shower is unknown.

DISCUSSION

Certain types of durable medical equipment must be authorized by the Division of Health Care Financing before they can be paid for by the medical assistance program. *See* Wis. Admin. Code, § DHS 107.24. The petitioner receives MA-Waiver services. She requests that the program pay for a walk-in bathtub at a cost of \$18,650. Because her husband is also disabled and receives MA-Waiver services, only \$7,224 of the cost would be attributed to her. The Division of Health Care Financing denied the request because it contends that she cannot safely use the tub.

When determining whether a service is necessary, the division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

No one disputed that the petitioner needs a new bathing option. She is 300 pounds, has been weakened by a stroke, and lacks balance, leaving her unable to get into or out of her current bathtub. As a result, she receives only sponge bathes, which are not very hygienic. The agency's concern is that because of her weight, weakness, and poor balance, she will not be able to safely use the walk-in tub. It points out that she often has trouble using a toilet whose seat is about the same height as the requested tub's seat. Instead of a tub, it suggests that she receive a walk-in shower, which it contends will be safer because it will include grab bars near a stool. The petitioner believes that her balance would be good enough to use the

requested tub. Regardless of what option she receives, she will continue to have caregivers available to help her bathe.

The agency should have had more information about each option available for the hearing. It did not rely on any occupational therapist or other expert to support its contention that a the tub would not meet the petitioner's needs but that a shower would. Nor did it supply any information about the cost of a shower. Usually when the agency's evidence is inadequate and the petitioner presents some evidence supporting her position, she would prevail. But I am reluctant to approve something as expensive as a walk-in bathtub without more evidence that the petitioner can use it safely and that a walk-in shower would not be significantly less expensive. Therefore, I will uphold the denial.

I note that the petitioner can file a new request for a walk-in bathtub. If she does, and the agency denies it, the agency should be have more information concerning her ability to use it and a shower, as well as more information on the cost of a shower.

CONCLUSIONS OF LAW

The department correctly denied the petitioner's request for a walk-in bathtub because she did not show by the preponderance of the credible evidence that it was medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of September, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 18, 2015.

Division of Health Care Access and Accountability
Bureau of Long-Term Support